

REMARKS/ARGUMENTS

Upon entry of the above amendment, claims 13, 16, 18, 21, 23, 26, 28, 31, 32, and 35 will have been amended and submitted for reconsideration by the Examiner. Claims 14, 15, 17, 19, 20, 22, 24, 25, 27, 29, 30, 33, and 34 are also pending and are submitted for reconsideration by the Examiner. In view of the above, Applicant respectfully requests reconsideration of the outstanding rejection and withdrawal of all the claims pending in the present application. Such action is respectfully requested and is now believed to be appropriate and proper.

Initially, Applicant would like to express his appreciation to the Examiner for the detailed Official Action provided.

Turning to the merits of the action, the Examiner has rejected claims 13-35 under 35 U.S.C § 103(a) as being unpatentable by OKAMOTO et al. (U.S. Patent No. 5,805,678) in view of YOSHIDA et al. (U.S. Patent No. 6,463,132 B1).

As noted above, Applicant has amended claims 13, 16, 18, 21, 23, 26, 28, 31, 32, and 35. Claims 14, 15, 17, 19, 20, 22, 24, 25, 27, 29, 30, 33, and 34 remain pending. Applicant respectfully traverses the above rejection based on amended and pending claims 13-35 and will discuss said rejection with respect to the amended and pending claims in the present application, as will be set forth herein below. The amended claims merely clarify the subject matter recited in the canceled claims but do not narrow the scope of the claims.

Applicant's claims 13-15, 18-20, and 23-25 relate to a receiving modem, a communication control apparatus, and a method for controlling a communication having a receiving modem that transmits a facsimile control signal, communicates with a transmitting modem based on the communication procedure specified in ITU Recommendation V.8 when a CM signal is detected as the response signal, and data communicates with the transmitting modem when a signal used in data communication is detected as the response signal. The data communication does not include voice communication and is in accordance with a defined communication procedure.

Applicant's claims 16-17, 21-22, and 26-27 also relate to a receiving modem, a communication control apparatus, and a method for controlling a communication having a receiving modem that transmits a data communication signal, detects a response signal to the data communication signal transmitted from the transmitting modem, communicates with the transmitting modem based on the communication procedure specified in ITU Recommendation V.8 when a CM signal is detected as the response signal, and data communicates with the transmitting modem, when a signal used in data communication is detected as the response signal. The data communication does not include voice communication and is in accordance with a defined communication procedure.

Thus, each of Applicant's claims require, *inter alia*, data (not voice) communication or V.8 communication.

On the other hand, OKAMOTO et al. relates to a facsimile system which utilizes a subunit of a cordless telephone. The facsimile system has a parent unit which is connected to a telephone line. The facsimile system also has a facsimile unit and a telephone unit which are connected by radio to the parent unit. When a CNG signal is detected, the parent unit connects the facsimile unit by radio, and when a CNG signal is not detected, the parent unit connects the telephone unit for speech (or voice) communication by radio.

However, by the present amendments, Applicant has excluded voice communication from data communication of the claims. The amendments are based on the disclosure of the specification where data communication and voice communication are treated differently. In particular, while voice communication is described at e.g. ST 320 of Figs. 6 and 7, data communication is shown at e.g. ST 312 of Figs. 6 and 7. Thus, OKAMOTO et al. does not contain "data communication" as defined in the claims, since OKAMOTO et al. does not teach "data communication" as shown at e.g. ST 312 of Figs. 6 and 7 of the present application.

Further, the Examiner states that "In fact YOSHIDA and OKAMOTO teach 'data communication'" (see YOSHIDA et al. abstract and column 1, lines 26-59 and column 22, lines 48-49 and see OKAMOTO et al. column 56, line 56) in the outstanding Official Action. However, data communication of the present invention does not include voice communication, as noted above. Data

communication of the present invention also is in accordance with a defined communication procedure, as shown at e.g. ST 312 of Figs. 6 and 7 of the present application. In other words, data communication of the present invention also does not include communication which is not in accordance with a defined communication procedure. Merely because either or both of the relied on references mention, in passing, "data communication," when the remainder of their extensive disclosures are directed to voice and/or facsimile (not data) communication, the references do not provide an adequate evidentiary basis for asserting that the references thereby render the claims unpatentable. Moreover, to the response under 37 C.F.R. § 1.116 filed December 8, 2003, Applicant attached two dictionary entries evidencing that "data communication" excludes "voice." These, together with the lack of any disclosure beyond a mere mention directed to data communication in the references, clearly evidences the patentability of the claimed subject matter.

By the present amendments, Applicant has clarified the meaning of the pending claims, as "data communication being in accordance with a defined communication procedure," without narrowing the scope thereof. Thus, OKAMOTO et al. and YOSHIDA et al. do not teach "data communication," as recited in the pending claims.

Therefore, it is respectfully submitted that the features recited in Applicant's claims 13-27 are not disclosed in OKAMOTO et al. cited by the Examiner.

YOSHIDA et al. relates to a receiving modem which executes a facsimile communication and a voice or speech communication based on a capability of the receiving party. OKAMOTO et al. also relates to voice or facsimile communication via a wireless subunit.

However, as explained above, by the present amendment, Applicant has excluded voice communication from data communication of the claims, and has clarified the meaning of data communication of the claims, as "data communication being in accordance with a defined communication procedure", without narrowing the scope thereof. Thus, YOSHIDA et al. does not contain "data communication," as recited in the claims.

Further, while YOSHIDA et al. teaches facsimile transmission based on ITU Recommendation V.8, YOSHIDA et al. utilizes ITU Recommendation V.8 with respect to changing facsimile transmission speeds between an ultra high speed and a conventional speed. However, YOSHIDA et al. does not disclose the claimed data communication and thus cannot supply the deficiencies of OKAMOTO et al.

Therefore, it is respectfully submitted that the features recited in Applicant's claims 13-27 are not disclosed in YOSHIDA et al. cited by the Examiner. The

pending claims are submitted to also be patentable over the Examiner's proposed combination, since neither OKAMOTO et al. nor YOSHIDA et al. discloses the combination of features recited in Applicant's claims 13-27.

Applicant's claims 28-30 and 32-34 also relate to a receiving modem and a communication control apparatus that transmits a DIS signal specified in ITU Recommendation T.30, communicates with the transmitting modem based on the communication procedure specified in ITU Recommendation V.8 when a CM signal is detected as the response signal, facsimile communicates with the transmitting modem based on the communication procedure specified in ITU Recommendation T.30 when a DCS signal specified in ITU Recommendation T.30 is detected as the response signal, and data communicates with the transmitting modem when a signal used in data communication is detected as the response signal. The data communication does not include voice communication and is in accordance with a defined communication procedure.

Applicant's claims 31 and 35 also relate to a receiving modem and a communication control apparatus that transmits an AC signal specified in at least one of Recommendation V.22 and V.23, communicates with the transmitting modem based on the communication procedure specified in ITU Recommendation V.8 when a CM signal is detected as the response signal, data communicates with the transmitting modem when a signal used in data communication is detected as the response signal, and sets a telephone mode for voice communication when a

response is not detected. The data communication does not include voice communication and is in accordance with a defined communication procedure.

In contract, OKAMOTO et al. relates to a facsimile system in which, when a CNG signal is detected, the parent unit connects to the facsimile unit by radio, and when a CNG signal is not detected, the parent unit connects to the telephone unit (i.e., speech function) by radio.

However, OKAMOTO et al. does not disclose a controller that executes one of three types of communications, e.g., a communication based on V.8, a facsimile communication, and a data communication, based on a detected response to the signal, e.g., the DIS signal transmitted from the transmitter. Thus, OKAMOTO et al. also does not disclose the combination of the features recited in these claims. Further, by the present amendment, Applicant has excluded voice communication from data communication of the claims and has clarified the meaning of data communication of the claims, as "data communication being in accordance with a defined communication procedure," without narrowing the scope thereof. Thus, OKAMOTO et al. does not contain "data communication," as recited in the claims.

Therefore, it is respectfully submitted that the features recited in Applicant's claims 28-35 are not disclosed in OKAMOTO et al. cited by the Examiner.

YOSHIDA et al. relates to a receiving modem which executes a facsimile communication and a voice or speech communication based on a capability of the receiving party.

However, YOSHIDA et al. does not disclose a controller that executes one of three types of communications, e.g. a communication based on V.8, a facsimile communication, and a data communication, based on a detected response to the signal, e.g. the DIS signal transmitted from the transmitter. Thus, YOSHIDA et al. does not disclose the combination of the features recited in the claims. Further, as explained above, by the present amendment, Applicant has excluded voice communication from data communication of the claims, and has clarified the meaning of data communication of the claims, as "data communication being in accordance with a defined communication procedure," without narrowing the scope thereof. Thus, YOSHIDA et al. does not contain "data communication," as recited in the claims.

Furthermore, while YOSHIDA et al. teaches facsimile transmission based on ITU Recommendation V.8, YOSHIDA et al. utilizes ITU Recommendation V.8 with respect to changing facsimile transmission speeds between an ultra high speed and a conventional speed. However, as explained above, YOSHIDA et al. does not disclose the claimed data communication and thus cannot overcome the shortcomings of OKAMOTO et al.

Therefore, it is respectfully submitted that the features recited in Applicant's claims 28-35 are not disclosed in YOSHIDA et al. cited by the Examiner. The pending claims are submitted to also be patentable over the Examiner's proposed combination, since neither OKAMOTO et al. nor YOSHIDA et al. discloses the combination of features recited in Applicant's claims 28-35.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejection and an indication of the allowability of all the claims pending in the present application in due course.

SUMMARY AND CONCLUSION

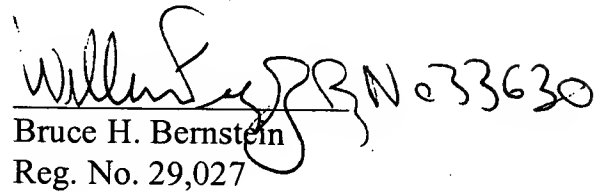
Applicant has made a sincere effort to place the present application in condition for allowance and believes that he has now done so. Applicant has pointed out the shortcomings of the references relied on by the Examiner with respect to the pending claims. Applicant also has amended the pending claims for consideration by the Examiner. With respect to the submitted claims, Applicant has pointed out the features thereof and has contrasted the features of the submitted claims with the disclosure of the references.

Accordingly, Applicant has provided a clear evidentiary basis supporting the patentability of all claims in the present application and respectfully requests an indication of the allowability of all the claims pending in the present application in due course.

Any amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Should the Examiner have any questions or comments regarding this Response, or the present application, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
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